

**Court of Appeals, State of Michigan**

**ORDER**

People of MI v Joshua Ray Butler

Docket No. 284613

LC No. 06-028020-FH

Kirsten Frank Kelly  
Presiding Judge

Kurtis T. Wilder

Christopher M. Murray  
Judges

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In lieu of granting leave to appeal, pursuant to MCR 7.205(D)(2), the Court orders that the April 5, 2007, judgment of sentence is VACATED, and the matter is REMANDED for resentencing. There was no evidence in the record that the victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety the victim during the offense. Accordingly, the trial court abused its discretion in assessing fifty points for Offense Variable 7. MCL 777.37(1)(a); *People v Hornsby*, 251 Mich App 462, 468-469; 650 NW2d 700 (2002).

The delayed application for leave to appeal is DENIED in all other respects.

The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUL 30 2008

Date

*Sandra Schultz Mengel*  
Chief Clerk